



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Matthew Long, Fire
Captain (PM2340C), Ocean City

CSC Docket No. 2021-1461

Administrative Appeal

ISSUED: JULY 2, 2021 (RE)

Matthew Long, represented by Craig Gumpel, Esq., requests retroactive seniority for service in another jurisdiction prior to his Intergovernmental Transfer (IGT) to Ocean City. Mr. Long also appeals the determination of the Division of Agency Services (Agency Services) which found that he lacked the required amount of permanent status in a title to which the examination was open for the promotional examination for Fire Captain (PM2340C), Ocean City.

By way of background, the petitioner intergovernmentally transferred from Wildwood to Ocean City effective April 6, 2019. As a Fire Fighter, in accordance with *N.J.A.C. 4A:4-7.4(c)*, he did not retain seniority for purposes of determining promotional, layoff or demotional rights and sick and vacation leave entitlements. The subject promotional examination was announced with a closing date of February 22, 2021. Candidates for the subject examination were required to have three years of continuous permanent service in the title Fire Fighter as of the February 22, 2021 closing date. As of the closing date, the petitioner had one year, ten months, 29 days of permanent service as a Fire Fighter with Ocean City based on his transfer date of April 6, 2019. As such, he did not have three years of time in grade with Ocean City. It is noted that there are 21 eligible candidates, and the examination has not yet been held.

On appeal to the Civil Service Commission (Commission), the petitioner states that prior to his intergovernmental transfer to Ocean City, he was a full-time career service Fire Fighter with Wildwood since October 24, 2014. While employed by Wildwood, the petitioner presents that he had numerous opportunities to serve

as a first level supervisor on an acting basis, but was not able to take the Civil Service first level supervisor exam because he fell 15 days short of the required three years of service as a Fire Fighter. He also states that he was a part time/seasonal Firefighter/EMT in Wildwood and a volunteer firefighter with the Marmora Volunteer Fire Company, in Marmora.

On April 6, 2019, the petitioner states that he intergovernmentally transferred from Wildwood to Ocean City. He claims that as part of the transfer process, he was not advised that his seniority with Wildwood would not transfer to Ocean City for Civil Service purposes, including promotional examination eligibility. In this regard, the petitioner contends that he believed that his years of experience with Wildwood would be credited for promotional examination purposes. As such, the petitioner believed that he had 6.5 years of aggregate, continuous service as a Fire Fighter as of the announced closing date for the subject examination. In support of his request, John P. Smith, Director/Fire Chief, Ocean City, indicates that during the pendency of the next Fire Captain promotional list, it is projected that there could be up to seven Fire Captain vacancies. Based on the large number of anticipated vacancies, Ocean City “strongly believes that the Captain’s promotional examination should be as competitive as possible, giving all those who would best serve our community the opportunity to compete for a promotional position during the life of the next captain’s promotional list.”

The petitioner argues that in the Intergovernmental Transfer Agreement, a transferee neither agrees to nor waives seniority rights. The appellant cites *In the Matter of Fire Captain (PM0432A) Ewing*, (CSC, decided September 20, 2019), stating that the Commission held that the “legislative intent of *N.J.S.A. 40A: 14-29* is to insure that only experienced employees can compete for superior ranked positions in the crucial area of public safety.” He argues that in *Ewing, supra*, the Commission relaxed *N.J.A.C. 4A:4-2.6(b)* in order to permit firefighters who had a minimum of three years of firefighter experience, but not with *Ewing*, be permitted to sit for the Fire Captain examination. In *Ewing, supra*, the Commission identified the purpose regarding three years’ experience as to ensure that any superior position of command be filled by experienced personnel and not by someone incapable, inefficient or inexperienced. While *Ewing* involved a newly created fire department whose personnel could not possibly have had the requisite three years of continuous permanent service, the petitioner argues that the principles regarding capable, efficient, and experienced career firefighters are applicable in his situation. Further, he maintains that the Commission has permitted aggregate, non-continuous service to count towards promotion examination eligibility in unique circumstances. For example, in *In the Matter of Chuvonda Covington-Leach, et al., County Correction Sergeant (PC2530E) Union County*, (MSB, decided August 11, 2004), Union County corrections officers were granted seniority for promotion examination eligibility based on prior Union County’ service after they transferred to the State and Monmouth County corrections and then transferred back to Union

County. The petitioner also argues that the Commission permits Fire Fighters who successfully appeal a list removal based on a psychiatric evaluation are granted a retroactive appointment date for seniority-based purposes. Therefore, those individuals are permitted to sit for a first level supervisor examination as long the Fire Fighter has completed the working test period. Given the appointing authority's support of his appeal, the petitioner requests that the Commission relax the provisions of *N.J.A.C.* 4A-4-2.6(b) and admit him to the subject examination.

CONCLUSION

N.J.A.C. 4A:4-7.4(c) states that in the case of an intergovernmental transfer in accordance with *N.J.A.C.* 4A:4-7.1A, those law enforcement officers, including sheriff's officers and county corrections officers, who waive all accumulated seniority rights, **and for all firefighters**, shall not retain such seniority for purposes of determining promotional, layoff or demotinal rights and sick and vacation leave entitlements.

N.J.S.A. 40A:14-29 states that:

In any municipality except in cities of the first class a promotion of any member or officer of the paid or part-paid fire department or force to a superior position shall be made from the membership of such department or force. No person shall be eligible for promotion to be a superior officer unless he shall have previously served as a permanent paid fireman for at least 3 years in such department or force.

N.J.A.C. 4A:4-2.6(b) provides:

In local service, applicants for promotion from entry level law enforcement or firefighter titles shall have three years of continuous permanent service in a title to which the examination is open, except as otherwise provided by law.

For purposes of Intergovernmental Transfers, aggregate service shall be calculated in the same manner as seniority as set forth in *N.J.A.C.* 4A:4-2.15(d)3 which provides:

Continuous permanent service accumulated prior to an intergovernmental transfer pursuant to *N.J.A.C.* 4A:4-7.1A shall be deducted from seniority for all firefighters, and for those law enforcement officers, including sheriff's officers and county correction officers, who have waived all accumulated seniority rights in agreeing to an intergovernmental transfer.

In the instant matter, the petitioner was correctly found ineligible for the subject examination since he was not permanent in the announced title of Fire Fighter for three years as of the closing date in the title Fire Fighter with Ocean City. Rather, as of the announced closing date, the petitioner had one year, ten months, 29 days of permanent service from his transfer date, April 6, 2019, and thereby lacked 1 year, 1 month, and 1 day.

The petitioner is essentially arguing that he did not understand the terms of his IGT agreement. The Commission is not persuaded. The petitioner signed the section "Employee Agreement." Directly underneath, on the same page, is the section "Sending Jurisdiction Agreement." That section states, "Transferees shall retain accumulated seniority rights and sick leave, **except for those transferring in the title of Firefighter** or those in Law Enforcement titles who have signed the attached waiver." On the next page, in the section "Receiving Jurisdiction Agreement," point 2 states, "Employees shall retain all accumulated seniority rights and sick leave, **except for those transferring in the title of Firefighter. ...**" This information was repeated on the form as it comes directly from *N.J.S.A. 40A:14-29*, and it is not ambiguous. Specifically, *N.J.S.A. 40A:14-29* provides that no person shall be eligible for promotion to be a superior officer unless he shall have previously served as a permanent paid fireman for at least 3 years ***in such department or force*** (emphasis added). As indicated in *Ewing, supra, N.J.A.C. 4A:1-1.2(c)* permits the Commission to relax the rules for good cause to effectuate the purposes of Title 11A, but the Commission is not empowered to relax statute. The petitioner was not employed by Ocean City for three years as of the closing date. The petitioner also did not transfer back to the sending jurisdiction, as in *Covington-Leach, supra*, and reference to that case is misplaced.

Signing the agreement was a condition of employment, and the appellant could have chosen not to be intergovernmentally transferred to Ocean City from Wildwood. An intergovernmental transfer is a voluntary agreement between an appointing authority, prospective employee, and this agency and no party is compelled to participate in the program. It is the employee's responsibility to understand the terms of any agreement he signs, or to ask questions regarding the meaning of terms he does not understand. There are multiple uses for seniority, which is not restricted to examinations. The rules do not permit an individual in the title of Fire Fighter to retain Civil Service related seniority rights. Regardless, as indicated above *N.J.S.A. 40A:14-29* requires an individual to have 3 years ***in such department or force***. The petitioner did not have three years of continuous permanent service as a Fire Fighter in Ocean City as of the February 22, 2021 closing date. Accordingly, he was correctly found to be ineligible for the examination, and he is not entitled to retroactive seniority. .

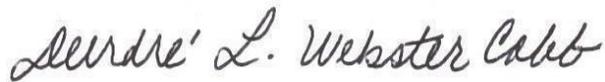
Accordingly, a thorough review of the record indicates that the petitioner has failed to demonstrate entitlement to relief, and the decision of Agency Services, that he did not meet the announced requirements for eligibility by the examination closing date, is amply supported by the record and he provides no basis to disturb this decision.

ORDER

Therefore, it is ordered that this request for retroactive seniority, and the appeal for admittance to the examination, be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 30TH DAY OF JUNE, 2021



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